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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/981,328	10/16/2001	Jason Lango	67272-8046.US01	4985
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Perkins Coie LLP P.O. Box 1208 Seattle, WA 98111-1208				
EXAMINER				
BILGRAMI, ASGHAR H				
ART UNIT		PAPER NUMBER		
2443				
NOTIFICATION DATE		DELIVERY MODE		
07/09/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentprocurement@perkinscoie.com

Office Action Summary

Application No.

09/981,328

Applicant(s)

LANGO ET AL.

Examiner

ASGHAR BILGRAMI

Art Unit

2443

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 October 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5, 6, 8-12 and 16-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-3, 5, 6, 8-12, 16-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 October 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SE/A/3)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date 3/16/2010, 4/29/2010

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3, 5, 6, 8-12, 16-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wen et al (U.S. 7,333,431 B2) and Weber (U.S. 6,424,993 B1).
3. As per claims 1, 6, 9, 16, 20 & 22 Wen disclosed a method for reducing peak output traffic bursts in a processing system, which includes a processor the method comprising: receiving, at the streaming media cache (figure 3), a first packet of data representing a particular portion of a media stream and including a specified packet delivery time , scheduled to be delivered to each of a number of downstream clients at the specified packet delivery time (col.3, lines 7-28); modifying the specified packet delivery time of the first packet of data, for delivery of the first packet of data to a first downstream client system, by the processor, by adding the first delay value to the specified packet delivery time of the first packet data (col.5, lines 1-14). However Wen did not explicitly disclose pseudo-randomly selecting a second delay value and modifying the specified packet delivery time of the first packet of data for delivery of the first packet of data to a second downstream client system, by adding the second delay value to the specified packet delivery time of second first packet of data.

In the same field of endeavor (col.5, lines 57-67 and col.6, lines 1-15) Weber disclosed disclose pseudo-randomly selecting a second delay value (col.6, lines 47-52) and modifying the specified packet delivery time of the first packet of data for delivery of the first packet of data to a second downstream client system, by adding the second delay value to the specified packet delivery time of second first packet of data (col.6, lines 25-46).

It would have been obvious to one in the ordinary skill in the art at the time the invention was made to have incorporated the pseudo-random delay to the packets as disclosed by Weber in the method/system disclosed by Wen in order to make distribution system more robust and scalable resulting in efficient fulfillment of the client content requests.

4. As per claims 2, 19, 21 & 23 Wen-Weber disclosed the method of claim 1 wherein pseudo-randomly selecting the first delay value comprises pseudo-randomly selecting the first delay value from within a specified time range (Weber, col.6, lines 47-52).

It would have been obvious to one in the ordinary skill in the art at the time the invention was made to have incorporated wherein pseudo-randomly selecting the first delay value comprises pseudo-randomly selecting the first delay value from within a specified time range as disclosed by Weber in the method/system disclosed by Wen in order to make distribution system more robust and scalable resulting in efficient fulfillment of the client content requests.

5. As per claims 5, 8 & 12 Wen-Weber disclosed the method of claim 6 further comprising: receiving a data file from the upstream server, the data file including a payload portion of the first streaming media data packet and a payload portion of the second streaming media data packet (Wen, col.1, lines 24-37); and storing the data file in a storage within the streaming media cache (Wen, figure 1).

6. As per claims 10 Wen-Weber disclosed the computer system of claim 9 wherein the second thread is configured to modify the first delayed first data packet in response to the first client delay by adding the first client delay to the first delivery time (Weber, col.6, lines 35-46).

It would have been obvious to one in the ordinary skill in the art at the time the invention was made to have incorporated wherein the second thread is configured to modify the first delayed first data packet in response to the first client delay by adding the first client delay to the first delivery time disclosed by Weber in the method/system disclosed by Wen in order to make distribution system more robust and scalable resulting in stable and efficient fulfillment of the client content requests in a multi-client environment.

7. As per claims 17 & 18 Wen-Weber disclosed the method of claim 16 wherein the first packet of data is framed and its data comprises streaming media (Wen, col.5, lines 1-14).

8. As per claim 25 & 26 Wen-Weber disclosed the method of claim 22, wherein said data packet is part of a live data stream being broadcasted to the plurality of client system (Wen, col.5, lines 1-14), wherein a pseudo-randomly selected delay time for first client system of the plurality of client systems is different from the pseudo-randomly selected delay time for a second client system of the plurality of systems (Weber, col.2, lines 30-38

9. As per claims 3, 11 & 24 Wen-Weber disclosed the method of claim 10 wherein the first client delay is pseudo-randomly selected the range to be from 0 to approximately 500 milliseconds (Weber, col.2, lines 30-38).

It would have been obvious to one in the ordinary skill in the art at the time the invention was made to have incorporated wherein the first client delay is pseudo-randomly selected the range to be from 0 to approximately 500 milliseconds as disclosed by Weber in the method/system disclosed by Wen in order to make distribution system more scalable and robust resulting in stable and efficient fulfillment of the client content requests in a multi-client environment.

Response to Arguments

10. Applicant's arguments with respect to claims 1-3, 5, 6, 8-12, 16-26 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure is indicated on PTO form 892.

Applicant's future amendments need to comply with the requirements of MPEP § 714.02, MPEP § 2163.04 and MPEP § 2163.06.

"with respect to newly added or amended claims, applicant should show support in the original disclosure for the new or amended claims." See MPEP § 714.02 and § 2163.06 ("Applicant should * * * specifically point out the support for any amendments made to the disclosure."); and MPEP § 2163.04 ("If applicant amends the claims and points out where and/or how the originally filed disclosure supports the amendment(s), and the examiner finds that the disclosure does not reasonably convey that the inventor had possession of the subject matter of the amendment at the time of the filing of the application, the examiner has the initial burden of presenting evidence or reasoning to explain why persons skilled in the art would not recognize in the disclosure a description of the invention defined by the claims."). See *In re Smith*, 458 F.2d 1389, 1395, 173 USPQ 679, 683 (CCPA 1972) *In re Wertheim*, 541 F.2d at 262, 191 USPQ at 96 (emphasis added).

"The use of a confusing variety of terms for the same thing should not be permitted.

New claims and amendments to the claims already in the application should be scrutinized not only for new matter but also for new terminology. While an applicant is not limited to the nomenclature used in the application as filed, he or she should make appropriate amendment of the specification whenever this nomenclature is departed from by amendment of the claims so as to have clear support or antecedent basis in the specification for the new terms appearing in the claims. This is necessary in order to insure certainty in construing the claims in the light of the specification." *Ex parte Kotler*, 1901 C.D. 62, 95 O.G. 2684 (Comm'r Pat. 1901). See 37 CFR 1.75, MPEP § 608.01 (i) and § 1302.01.

Note that examiners should ensure that the terms and phrases used in claims presented late in prosecution of the application (including claims amended via an examiner's amendment) find clear support or antecedent basis in the description

so that the meaning of the terms in the claims may be ascertainable by reference to the description, see 37 CFR 1.75(d)(1) . If the examiner determines that the claims presented late in prosecution do not comply with 37 CFR 1.75(d)(1), applicant will be required to make appropriate amendment to the description to provide clear support or antecedent basis for the terms appearing in the claims provided no new matter is introduced."

"USPTO personnel are to give claims their broadest reasonable interpretation in light of the supporting disclosure." In re Morris, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023,1027-28 (Fed. Cir. 1997). MPEP § 2106. "

The examiner has cited particular columns and line numbers in the references as applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the responses, to fully consider each of the cited references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage disclosed by the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ASGHAR BILGRAMI whose telephone number is (571)272-3907. The examiner can normally be reached on 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tonia L.M. Dollinger can be reached on 571-272-4170. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. B./
Examiner, Art Unit 2443

/David E. England/
Primary Examiner, Art Unit 2443